

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 29, 2000  
TIME: 9:00 a.m.  
PLACE: DLNR Board Room  
Kalanimoku Bldg.

Chairperson Timothy E. Johns called the meeting of the Commission on Water Resource Management to order at 9:12 a.m.

The following were in attendance:

**MEMBERS:** Mr. Timothy Johns, Dr. Bruce Anderson, Mr. Robert Girald,  
Mr. David Nobriga, Mr. Brian Nishida Mr. Herbert Richards, Jr.

**STAFF:** Ms. Linnel Nishioka, Mr. Roy Hardy, Mr. Edwin Sakoda, Ms. Faith Ching

**COUNSEL:** Edsel Yamada

**OTHERS:** Ben Kudo, Karen Piltz, Jim Anthony, Paul Achitoff, Kala Hoe,  
George Hudes, Guy Nakamoto

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

**1. Old Business/Announcements by Deputy Director Linnel Nishioka**

Deputy Director Linnel Nishioka recognized Chairperson Johns that this was his last meeting and thanked him for his leadership for the Department and for his personal friendship.

**4. Waiahole-Waikane Community Association, Hakipu'u Ohana, Ka Lahui Hawaii, Kahalu'u Neighborhood Board No. 29, and Makawai Stream Restoration Alliance Petition for Declaratory Order Denying Bishop Estate's Water Use Permit Application for Failing to Comply with the Commission on Water Resource Management's Final Decision and Order in the Waiahole Ditch Combined Contested Case Hearing (DEC-OA00-G6)**

**Kamehameha Schools Application for a Water Use Permit (WUP No. 474)  
Waiahole Ditch System Existing/Future Irrigation and Dust Control Use for 4.2 mgd, Koolaupoko, Kahana, and Waipahu-Waiawa Ground Water Management Areas, Oahu**

## PRESENTATION OF SUBMITTAL: Mr. Roy Hardy

## AMENDED RECOMMENDATIONS:

1. Encourage Kamehameha Schools and Waiahole-Waikane Community Association to continue the productive dialogue that has occurred over the past four months. If the talks continue, the parties shall file quarterly reports updating the Commission on the progress on the progress of the discussion.
2. Require Kamehameha Schools to provide additional information, within 90 days, on alternative water sources, including a detailed ~~verified~~ verifiable cost breakdown for each identified alternative and detailed analyses on the feasibility of each identified alternative.
3. The Waiahole-Waikane Community Association shall have thirty (30) days to amend the petition to discuss the impact of the Hawaii Supreme Court Waiahole case on this application after Kamehameha Schools submits their report. Further, Kamehameha Schools will have thirty (30) days to respond to the amended petition. Staff shall have (thirty) 30 days to return to the Commission with the recommendation on the petition for declaratory order and the subject application.

Mr. Hardy made corrections to the submittal. The first correction on the first page under source landowners, Amfac/JMB was deleted. The second correction, fourth address should be Agribusiness Development Corporation instead of the Department of Land and Natural Resources. The third correction on page 5 under ISSUES, 2<sup>nd</sup> paragraph, the reference to Castle and Cooke should be changed to Dole. Subsequently, Mr. Hardy added a statement that Monty Richards recused himself from the remanded Waiahole Contested Case Hearing.

Deputy Attorney General Edsel Yamada stated that the Attorney General's office is taking this statement into consideration and will be offering the Commission an opinion.

## TESTIMONY BY APPLICANT:

Mr. Ben Kudo for Kamehameha Schools (KS) stated that KS does not object to staff's first recommendation. With respect to the second recommendation, Mr. Kudo stated that KS intends to continue its talks with interested Windward parties. In regard to the third recommendation, Mr. Kudo stated that they would require certain clarification regarding the scope and level of details requested by the Department. Mr. Kudo stated that KS recommends that staff's third recommendation be amended that KS will provide the additional information regarding the feasible alternatives within 90 days after consulting with staff regarding the scope and level that they are requesting.

## TESTIMONIES:

Mr. Paul Achitoff of Earthjustice stated for the record and raised an objection to Commissioner Richards participating in this matter being that he has recused himself from the Waiahole Ditch matter. He feels that the matters are closely connected and that there is no rational way for Commissioner Richards to participate in one and not the other.

Mr. Achitoff stated that with regard to staff's recommendation feels that the Commission should dismiss Kamehameha School's application. He stated that this application has been pending for almost 3 years and claimed that it is inadequate in light of the Commission's decision in the Waiahole Ditch Contested Case. In light of the Supreme Court's order, Mr. Achitoff stated that it seems undisputable that the KS application did not meet the requirements of the Water Code. Mr. Achitoff stated that he felt that Earthjustice is entitled to have their petition ruled upon. The petition has been pending for 10 months. Mr. Achitoff stated that it is not right that the KS application be deferred. He requested that the petition be ruled upon and that the laws be applied and that the application be dismissed. KS will always be entitled to submit another application at a later date.

Mr. Achitoff stated that regarding staff's first recommendation, the talks ended months ago and have not been ongoing. There has been no effort to resume the talks and there is no intention or desire to resume the talks. They feel that the talks would not be productive.

On staff's recommendation no. 3, Mr. Achitoff stated that he did not think it justifiable to amend the third recommendation.

Jim Anthony on behalf of Hawaii Laieikawai Association (HLA) stated that since HLA funded the public trust section of the Waiahole Ditch Contested Case that HLA is very much interested in this case. He felt that the application of KS is part of a pattern of defying the will of the court. They see no evidence that KS intends to adhere to the court's decision. He felt that it would not be right if the Commission defer action on this matter and it should be dismissed.

Mr. Kala Hoe of Hakipuu Ohana asked the Commission to refuse the application of KS.

Chairperson Johns asked for a motion to move into executive session for legal advice on the continued participation of Commissioner Richards in this case.

## MOTION: (RICHARDS/GIRALD)

At 9:45 am the Commission went into Executive Session.

The meeting was resumed at 10:46 am.

Commissioner Richards made a statement saying that he would not act at this meeting of November 29, 2000 on Item No. 4. However, he did not recuse himself pending further conversations with the attorney general.

Commissioner Bruce Anderson stated that the legal landscape has changed since the Supreme Court remanded the case back to the Water Commission. He suggested that both parties should address the impact of the Court's Waiahole case on this application prior to further action by the Commission.

Commissioner Anderson then made a motion to look at the staff recommendations and delete recommendation no. 1. Then recommendations 2 and 3 would be renumbered to 1 and 2.

Commissioner Anderson then suggested the third recommendation.

MOTION: (ANDERSON/GIRALD)  
To approve the submittal as amended.  
UNANIMOUSLY APPROVED AS AMENDED.

**1. Minutes of the October 26, 2000 meeting**

MOTION: (RICHARDS/GIRALD)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**3. Delegation of the Waiahole Ditch Combined Contested Case Hearing to a Hearing Officer and Appointment of Dr. Lawrence Miike as Hearing Officer for the Waiahole Ditch Combined Contested Case Hearing**

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

We recommend that the Commission delegate the Waiahole Ditch Combined Contested Case Hearing to a hearing officer and to appoint Dr. Lawrence Miike as the hearing officer for the Waiahole Ditch Combined Contested Case Hearing.

TESTIMONIES:

Dr. Jim Anthony asked the Commission if the hearing officer would obtain submissions only from the parties with standing. He asked if interested parties and members from the public who do not have standing be eligible to submit opinions also.

Deputy Director Nishioka stated that this case on remand will be for the parties that were part of the original case. The hearing officer will conduct the hearing on the seven (7) issues the court asked the Commission to conduct it on.

Chairperson Johns asked Deputy Director Nishioka to request to the hearing officer to work with the affected parties that are part of the contested case to see if there is a way that additional public input can be obtained. Deputy Director Nishioka stated that the original order did contemplate public input through community meetings but the Windward parties filed an objection to getting public input at community meetings.

Deputy Director Nishioka also stated that the last order that the Commission issued did ask the parties how the Commission could obtain public input because of its importance to the Commission.

MOTION: (NOBRIGA/GIRALD)

To approve the submittal.

UNANIMOUSLY APPROVED.

Since there was no other business, this meeting was adjourned at 11:07 a.m.

Respectfully submitted,

FAITH F. CHING  
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA  
Deputy Director